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ROBERT VACCARI, and JAKE ADAMS

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

L.C., a minor by and through her
guardian *ad litem* Maria Cadena,
individually and as successor-in-interest
to Hector Puga; I.H., a minor by and
through his guardian *ad litem* Jasmine
Hernandez, individually and as
successor-in-interest to Hector Puga;
A.L., a minor by and through her
guardian *ad litem* Lydia Lopez,
individually and as successor-in-interest
to Hector Puga; and ANTONIA
SALAS UBÁLDO, individually,

Plaintiffs,

vs

STATE OF CALIFORNIA; COUNTY
OF SAN BERNARDINO; S.S.C., a
nominal defendant; ISAAH KEE;
MICHAEL BLACKWOOD;
BERNARDO RUBALCAVA;
ROBERT VACCARI; JAKE ADAMS;
and DOES 6-10, inclusive,

Defendants.

CASE NO. 5:22-cv-00949-KK-(SHKx)

*Assigned for All Purposes to:
Hon. Kenly K. Kato – Courtroom 3*

**COUNTY DEFENDANTS' NOTICE
OF MOTION AND MOTION IN
LIMINE NO. 4 TO EXCLUDE
"SAL'S" UNAUTHENTICATED
BLACK & WHITE
SUREVEILLANCE VIDEO;
DECLARATION OF AMY R.
MARGOLIES; EXHIBITS**
[Proposed] Order filed Concurrently]

Date: May 15, 2025
Time: 9:30 a.m.
Courtroom: 3

*Trial Date: June 2, 2025
Complaint filed: 06/07/2022
FAC filed: 10/18/22
SAC filed: 01/13/23
TAC filed: 05/12/23*

**COUNTY DEFENDANTS' NOTICE OF MOTION AND MOTION
IN LIMINE NO. 4 TO EXCLUDE "SAL'S" UNAUTHENTICATED
BLACK & WHITE SUREVEILLANCE VIDEO**

**TO ALL PARTIES AND TO THEIR RESPECTIVE ATTORNEYS OF
RECORD:**

PLEASE TAKE NOTICE that at the Pretrial Conference on May 15, 2025¹ at 9:30 a.m., or as soon thereafter as the matter may be heard, in Courtroom 3 of the above-entitled Court, located at 3470 Twelfth Street, 3rd Floor, Riverside, California, Defendants County of San Bernardino, Jake Adams, and Robert Vaccari (“Defendants”) will, and hereby do, move the Court *in limine*, before jury selection or commencement of trial, for an order that Plaintiffs be precluded from referring to, or using any pleading, testimony, remarks, questions, or arguments regarding an unauthenticated black and white surveillance video of the incident purportedly taken by an individual named “Sal” (last name unknown), an alleged neighbor to where the incident occurred, at trial.

Plaintiffs and Plaintiffs’ counsel, and through them, each and every one of their witnesses, should be instructed not to mention, refer to, interrogate concerning, or attempt to convey to the jury in any manner, either directly or indirectly, any of the facts hereinafter mentioned, without first obtaining permission of the Court outside the presence and hearing of the jury; not to make any reference to the fact that this Motion has been filed, and/or granted; and, to warn and caution each and every one of Plaintiffs’ witnesses to strictly follow the same instructions.

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¹ County Defendants’ (County of San Bernardino, Jake Adams, and Robert Vaccari) have reached a tentative resolution subject to Board of Supervisor approval on April 29, 2025, as set forth in the parties Joint Report on Settlement. However, in an abundance of caution because the trial date is still set for June 2, 2025, we are submitting this filing to be in compliance with the Court’s Scheduling Order.

DEFENDANTS' MOTION IS MADE ON EACH OF THE FOLLOWING
GROUND:

The unauthenticated black and white surveillance video allegedly taken by “Sal” (last name unknown) lacks foundation, is confusing to a jury, and any slight relevance, which Defendants dispute, is substantially outweighed by the prejudice to Defendants. *Fed. R. Evid.* 402, 403. Further, Plaintiffs’ counsel previously agreed to not use the video taken by “Sal” at trial but has now refused to agree to a stipulation regarding same.

Defendants’ Motion is based upon this Notice, the accompanying Memorandum of Points and Authorities, the declaration of Amy R. Margolies, exhibits, the papers and records on files herein, and upon such further oral and documentary evidence as may properly come before the Court.

This motion is made following the conference of counsel pursuant to Local Rule 7-3 which included Defense counsel sending email correspondence on April 7, 2025, which detailed the grounds for this motion *in limine* and a follow up Zoom conference with all parties on April 11, 2025. Plaintiffs’ counsel opposes this motion *in limine*.

DATED: April 17, 2025

LYNBERG & WATKINS
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By: /s/ Amy R. Margolies
SHANNON L. GUSTAFSON
AMY R. MARGOLIES
Attorneys for Defendants,
COUNTY OF SAN BERNARDINO,
ROBERT VACCARI and JAKE ADAMS

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Decedent Hector Puga, wanted for shooting a gun at a complete stranger, led law enforcement in an hour-long pursuit through residential neighborhoods at speeds ranging from 50 – 90 mph. Mr. Puga then orchestrated an hour-long standoff wherein law enforcement exhausted less lethal force and employed various negotiation tactics to no avail. Mr. Puga eventually exited his vehicle, only to lure the police in, and then pulled a gun from his waistband and fired at them. Law enforcement returned fire.

Plaintiffs, Antonia Ubaldo, Mr. Puga’s mother, and three of Mr. Puga’s minor children, L.C., I.H., and A.L., bring this action against the State of California, individual defendants, CHP Kee, Blackwood and Rubalcava, County of San Bernardino and individual defendants, Vaccari and Adams.

At issue here, is an unauthenticated black and white surveillance video of the incident purportedly taken by an individual known as “Sal” (last name unknown) who Plaintiffs claim lived at one of the residences near the incident. (Margolies Decl. ¶ 2, Exhibit A – “Sal’s” video)². Up until three days ago, it had been Defendants’ understanding that this video would not be used in trial as Plaintiffs’ previously presented to the parties and the Court that they were not intending to use in the Puga matter. (Margolies Decl. ¶ 3, Exhibit B – Plaintiffs’ Opposition to County’s Ex Parte to Extend Discovery Cutoff pg. 6:28-7:2). However, in the final hour, Plaintiffs have refused to agree to a stipulation to exclude the unauthenticated black and white surveillance video at trial. (Margolies Decl. ¶ 4, Exhibit C –

² In order to play “Sal’s” video, media player is needed to view and listen as the VLC player will only play audio.

1 Plaintiff Correspondence re Refusal to Stipulate, Defendant Correspondence re
2 Request Reconsideration, and Plaintiff Correspondence re Continued Refusal to
3 Stipulate). Plaintiffs appear to agree that the unauthenticated video is not accurate
4 as to the timeline of the shooting, nor does the audio and video correspond to one
5 another, the video itself is zoomed in and out and appears to have been manipulated
6 and Plaintiffs' only purported use is show the effect it had on a witness, Annabelle
7 Botten (Plaintiff in the related *Botten* case) when she later viewed the video
8 claiming watching it contributed to her trauma. (Margolies Decl. ¶ 3, Exhibit B –
9 Dkt. #97 Plaintiffs' Opposition to County's Ex Parte to Extend Discovery Cutoff pg.
10 6:28-7:9). Given the multiple foundational issues, relevancy, and prejudicial nature
11 of the video, Plaintiffs sudden reversal to refuse to stipulate to exclude this video, at
12 this stage, appears to lack any reasonable justification. Further, Plaintiff agrees
13 there are several other videos that capture the incident that are of better quality and
14 have been authenticated. (Margolies Decl. ¶ 3, Exhibit B – Dkt. #97 Plaintiffs'
15 Opposition to County's Ex Parte to Extend Discovery Cutoff pg. 6:28-7:2).
16 Therefore, given Plaintiffs' last-minute refusal to exclude the video, the lack of
17 relevance and prejudicial nature of this particular video, and because allowing the
18 video to be used at trial will create an undue consumption of time as Defendants will
19 need to call additional witnesses to attack the video's relatability, and because there
20 are several other videos that capture the incident that are of better quality and have
21 been authenticated and are not disputed, this black and white surveillance video of
22 "Sal" should be excluded pursuant to *Fed. R. Evid.* 402, 403, 901.

23 **II. "SAL's" BLACK AND WHITE SURVEILLANCE VIDEO SHOULD**
24 **BE EXCLUDED AS IT HAS NOT BEEN PROPERLY**
25 **AUTHENTICATED AND LACKS FOUNDATION**

26 *Fed. R. Evid.* 901 provides methods for how a party can authenticate an item
27 of evidence, including but not limited to testimony regarding the evidence in
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1 question. Applied here, Plaintiffs have failed to authenticate the video using any of
2 the reasonable and available methods of authentication as the only information
3 Plaintiffs have is that the video was reportedly captured from “Sal’s” home and
4 “Sal” never showed up for his deposition, thus Defendants were unable to have their
5 experts’ questions regarding the reliability of the video answered, as explained
6 further below. As such, “Sal’s” video should be excluded as it has not been
7 properly authenticated and lacks foundation for use at trial.

8 **III. THE BLACK AND WHITE SURVEILLANCE VIDEO TAKEN BY**
9 **“SAL” SHOULD BE EXCLUDED AS IRRELEVANT, HIGHLY**
10 **PREJUDICIAL AND INADMISSIBLE**

11 *Fed. R. Evid.* 402 provides “[e]vidence which is not relevant is not
12 admissible.” Relevant evidence is “any evidence having any tendency to make the
13 existence of any fact that is of consequence of the determination of the action more
14 probable or less probable than it would be without the evidence.” *Fed. R. Evid.* 401.
15 The only purported reason for use of this video, according to Plaintiffs’ is that they
16 claim that the video will be offered to show the contributing trauma
17 watching/hearing the video had on Annabelle Botten, Plaintiff in the related but
18 separate *Botten* trial and is therefore not relevant to the issues to be determined in
19 this instant *Puga* trial. Argument and evidence that has no factual connection to this
20 case does not tend to prove or disprove any fact of consequence and should be
21 excluded pursuant to *Fed. R. Evid.* 401 and 402.

22 Even if Plaintiffs intend to use this video as they have said to show it
23 contributed to Annabelle Botten’s trauma, even if somehow the Court deems this
24 relevant to the *Puga* case, should be excluded as its slight probative value is
25 substantially outweighed by its prejudicial effect. *Fed. R. Evid.* 403 allows the
26 exclusion of even relevant evidence if its probative value is substantially
27 outweighed by its prejudicial effect. *Fed. R. Evid.* 403 states “[a]lthough relevant,
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1 evidence may be excluded if its probative value is substantially outweighed by the
2 danger of unfair prejudice, confusion of the issues, or misleading the jury, or by
3 considerations of undue delay[] [and] waste of time . . .” Rule 403 requires the
4 prejudice be “unfair.” *U.S. v. Young*, 754 F.Supp. 739, 742 (S.D. 1990). “Unfair”
5 in this context means the evidence has an undue tendency to suggest to a jury a
6 decision based upon an improper basis, usually an emotional one. *Young*, 754
7 F.Supp. at 742. Additionally, where evidence is not closely related to the issue
8 being charged and is otherwise irrelevant, the probative value of such evidence is
9 substantially outweighed by the danger of unfair prejudice. *U.S. v. Guerrero*, 756
10 F.2d 1342, 1348 (9th Cir. 1984); *U.S. v. Blaylock*, 20 F.3d 1458, 1464 (9th Cir.
11 1994).

12 Under appropriate circumstances, a motion *in limine* may be used to exclude
13 inadmissible or prejudicial evidence before it is offered at trial. *Luce v. United*
14 *States*, 469 U.S. 38, 40 n. 2, 105 S.Ct. 460, 83 L.Ed.2d 443 (1984). This serves to
15 avoid the futile attempt of “unring[ing] the bell” when jurors have seen or heard
16 inadmissible evidence, even when stricken from the record. *Brodit v. Cambra*, 350
17 F.3d 985, 1004–05 (9th Cir.2003) (quoting *Kelly v. New W. Fed. Sav.*, 49
18 Cal.App.4th 659, 669, 56 Cal.Rptr.2d 803 (2d Dist.1996)). Motions *in limine* may
19 also serve to save time by ruling on evidentiary disputes in advance, minimizing
20 side-bar conferences and other disruptions at trial and potentially obviating the need
21 to call certain witnesses. *See, United States v. Tokash*, 282 F.3d 962, 968 (7th
22 Cir.2002).

23 Applied here, the prejudicial effect of allowing Plaintiffs to use “Sal’s”
24 unauthenticated black and white video at trial will be highly prejudicial to the
25 liability issues facing Defendants as there are many issues with the video and the
26 manner in which defense counsel received the video. To begin, as early as January
27 19, 2023, Defendants had requested all video of the incident and it was not until
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1 almost two years later that they finally received it, were able to access it, and were
2 given information as to who took the video, “Sa,” last name unknown. (Margolies
3 Decl. ¶ 5, Exhibit D –County’s Ex Parte to Reconsider for Single Deposition pg.
4 10:1-27). Further, upon receiving and reviewing the video, there was reason to
5 believe the video had been altered by someone as the video zooms in and out at
6 times and does not appear to be synced with the video images. (*Id.* pg. 14:9-11).
7 However, given that Plaintiffs did not create this video, the only way for Defendants
8 to obtain the information as to how the video was created, on what system, from
9 what angle, and whether the original owner made modifications, was to depose
10 “Sal” but as explained above, “Sal” never appeared for his deposition and has
11 ignored calls to the number presumably belonging to him, thereby thwarting
12 Defendants sole opportunity to have these crucial defense expert questions answered
13 prior to trial. (Margolies Decl. ¶ 6).

14 Additionally, Defendants relied on Plaintiffs’ representation to the Defendants
15 as well as Plaintiffs’ representation to the Court, that they were not intending to use
16 the black and white video. In response to County’s Ex Parte re extending the DCO
17 to allow for “Sal’s” deposition, Plaintiffs’ clearly and in no uncertain terms, stated:
18 “... Plaintiffs do not intend on using the black-and-white video to establish the
19 timeline of the shooting or contend that the events shown on the video or that they
20 match up to the audio and video. (Margolies Decl. ¶ 3, Exhibit B – Plaintiffs’
21 Opposition to County’s Ex Parte to Extend Discovery Cutoff pg. 6:28-7:2).
22 Plaintiffs go on to agree that “[t]here are several other videos that captured the
23 incident, including the shooting, that are of better quality that have been
24 authenticated. The video will not be offered to show that the shooting occurred as
25 depicted in the video.” (*Id.* pg. 7:1-5). Therefore, it remains unclear as to what
26 probative value this video has as Plaintiffs have acknowledged that it lacks
27 reliability and appears to represent no value to our jury.

1 The sliver of relevance, which Defendants dispute, is that per Plaintiffs,
2 “Instead, the video will be offered to show the effect it had on Plaintiff Annabelle
3 Botten. Ms. Botten testified at her deposition that the black-and-white video
4 contributed to her trauma because in the video, she could hear her family screaming
5 for help.” (Id. pg. 7:5-8). Aside from the merits of this argument, the parties are
6 presently engaged in the *Puga* trial and not the *Botten* trial. Plaintiff Botten is not a
7 Plaintiff in the *Puga* case and any testimony regarding her trauma would be and will
8 be objected to in the *Puga* trial. Thus, Plaintiffs sudden reversal at this stage
9 appears to lack any reasonable justification

10 As such, given the lack of relevance and the potential for unfair prejudice,
11 such evidence can and should be excluded. The minimal, if any, relevance is
12 substantially outweighed by the prejudicial effect. Moreover, such evidence should
13 also be excluded as it will result in an undue consumption of time if Defendants are
14 required to rebut these claims. In short, as noted above Plaintiffs’ counsels have
15 already admitted that there are several other videos that captured the incident that
16 have been authenticated and are of better quality. Further, Defendants will need to
17 counter with evidence challenging the videos authenticity if the video is permitted
18 for Plaintiffs’ newly stated purpose, thereby resulting in an undue consumption of
19 time as the video appears to represent no value to our jury.

20 IV. CONCLUSION

21 For all the foregoing reasons, Defendants respectfully request that this Court
22 grant Defendants’ motion *in limine* and exclude “Sal’s” unauthenticated black and
23 white surveillance video from the instant *Puga* trial.

1 DATED: April 17, 2025

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3 By: */s/ Amy R. Margolies*
4 **SHANNON L. GUSTAFSON**
5 **AMY R. MARGOLIES**
6 Attorneys for Defendants,
7 COUNTY OF SAN BERNARDINO,
8 ROBERT VACCARI and JAKE ADAMS

9
10 **CERTIFICATE OF COMPLIANCE**

11 The undersigned, counsel of record for the County of San Bernardino, Jake
12 Adams, and Robert Vaccari, certifies that this brief contains 1,903 words, which:

13 ☒ complies with the word limit of L.R. 11-6.1.

14 ☐ complies with the word limit set by court order dated _____.

15 DATED: April 17, 2025

LYNBERG & WATKINS
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16
17 By: */s/ Amy R. Margolies*
18 **SHANNON L. GUSTAFSON**
19 **AMY R. MARGOLIES**
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